

RESPONSE TO RESTRICTION REQUIREMENT

In response to the Restriction Requirement that the Examiner imposed, Applicant elects, without traverse, to prosecute claims 1-34, 45-61, 64, 68, 69, 109-112, 127-138 and 151, i.e., Group I claims.

Claims 35-44, 62, 63, 65-67, 70-108, 113-126, 139-150 and 152 have been cancelled.

Applicants respectfully submit that the Claims in the Application are in condition for examination. Favorable consideration and allowance of the pending Claims is therefore respectfully requested. The Examiner is invited to contact the undersigned with any questions, comments or suggestions relating to the referenced patent application and this election.

REQUEST FOR A REFUND

Applicants request a refund in this case because the abandonment of the current patent application was the fault of the U.S. PTO and not the Applicants. The Applicants will show that the Applicants complied with the Rules as regards assignment, recordation, power of attorney and response to office action with the U.S. PTO.

In case this request is denied, Applicants include herewith a Petition to Revive for Unintentional Abandonment, a Response, Terminal Disclaimer and Fees. However, Applicants believe that the U.S. PTO committed the errors that led to the abandonment of this case and respectfully request a refund for all fees paid as a result of the errors caused by the U.S. PTO, including the fees paid with this request and the withdrawal of any terminal disclaimer.

FACTS

1. This patent application was filed Sept. 19, 2003 by the firm of Edwards & Angell.
2. A Notice of Missing Parts was mailed Dec. 12, 2003.
3. On December 19, 2003, Applicants filed an Assignment in which the inventors assigned their entire right and interest to: Board of Regents, The University of Texas System.
4. On December 19, 2003, Applicants also responded to the Notice to File Missing Parts

with an Oath/Declaration, the missing parts and A Statement Under 37 C.F.R. §§3.71 and 3.73 and Power of Attorney executed by a duly authorized representative of the Assignee: Board of Regents, The University of Texas System.

5. On June 21, 2005 the U.S. PTO send three separate notices to Edwards & Angell, LLP (Customer No. 21874) all three responding to the filing of December 24, 2003, including:

- a. A Notice Regarding Change of Power of Attorney dated June 21, 2005 sent to Edwards & Angell, LLP (Customer No. 21874) and marked FORMER ATTORNEY/AGENT COPY indicating that the Power of Attorney had been revoked by the Assignee, initialed by Kim R. Watson Saunders;
- b. A Notice Regarding Change of Power of Attorney dated June 21, 2005 sent to Edwards & Angell, LLP (Customer No. 21874) ATTORNEY/APPLICANT COPY indicating that the Power of Attorney had accepted, initialed by Kim R. Watson Saunders; and
- c. A Notice Regarding Change of Power of Attorney dated June 21, 2005 sent to Edwards & Angell, LLP (Customer No. 21874) ATTORNEY/APPLICANT COPY indicating that the Power of Attorney had been revoked by the Assignee, but neither initialed by Kim R. Watson Saunders, nor indicating the new Attorney of Record.

6. The File Wrapper for this case does not show that any such revocation or action was taken by the Assignee in this case until a Revocation and Power of Attorney was filed by current Counsel April 5, 2007 (attached).

7. On October 13, 2006, Applicants' Counsel, Edwards & Angell (now Edwards, Angell Palmer & Dodge, LLP, Customer No. 21874) properly filed a Change of Address in this case.

8. Despite the proper filing of a Change of Address by Edwards, Angell Palmer & Dodge, LLP, to date, their mailing address has not been updated.

9. On October 3, 2006, the U.S. PTO mailed a Restriction Requirement.

10. On March 5, 2007, Applicants' current Counsel properly and timely filed a Response to Office Action (March 3, 2007 fell on a Saturday), including an extension of time and required

fee.

11. On March 23, 2007, the examiner once again mailed the same restriction requirement to the wrong address for Edward Angell.
12. On April 5, 2007, Applicants' current Counsel properly filed a Revocation and Power of Attorney executed by a duly authorized representative of Board of Regents, The University of Texas System.
13. On April 25, 2007 and May 2, 2007, the U.S. PTO again sent notices regarding the Power of Attorney to Applicants' current Counsel (April 25, 2007) and former Counsel (May 2, 2007), again to the wrong address.

ARGUMENT

14. The record shows that Applicant's properly filed their Assignment, Oath/Declaration and Power of Attorney under 37 CFR 3.71 and 3.73 on or about December 19, 2003.
15. The record also shows that despite the filing of a Change of Address, the U.S. PTO repeatedly sent the correspondence to the incorrect address.
16. The Response to the Office Action of October 3, 2006 was properly executed by Counsel under 37 CFR 1.34, thereby responding to the Office Action mailed October 3, 2006. As such, the examiner's office action mailed to the wrong address for Edwards Angell was moot and/or inoperative as it had already been replied to.
17. The Revocation and Power of Attorney filed April 5, 2007 was proper because the assignee had filed the required form with a statement under 37 CFR 3.71 and 3.73.
18. The Notice Regarding Power of Attorney is incorrect because the required Certificate required under 37 C.F.R. 3.73(b) had been made of record and is part of the file wrapper.

RELIEF

19. Applicants request withdrawal of the Abandonment of this Application.
20. Applicants request that the U.S. PTO accept the Response to the Office Action of October 3, 2006, mailed March 5, 2007.
21. Applicants request that the U.S. PTO accept the Revocation and Power of Attorney filed

April 5, 2007, as it was properly executed by the Assignee of record.

22. Applicants request a refund of fees paid to the U.S. PTO as a result of the U.S. PTO's errors, including the fee for the Petition to Revive and Terminal Disclaimer.

23. Applicants request a patent term extension for all the days that this application was delayed as a result of the errors caused by the U.S. PTO.

Therefore, Applicants respectfully submit that the Claims in the Application are in condition for examination. Favorable consideration and allowance of the pending Claims is therefore respectfully requested. The Examiner is invited to contact the undersigned with any questions, comments or suggestions relating to the referenced patent application.

Dated this February 3, 2008.

Respectfully submitted,
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